

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 3, 2003 (Paper No. 10). Upon entry of this response, claims 1-3 and 5-20 are pending in the application.

1. Rejection of Claims 1-3 and 5-20 under 35 U.S.C. §112

Claims 1-3 and 5-20 stand rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the written description requirement. Specifically, the Office Action rejects the following language in claims 1, 5, 8 and 11 as new matter: "where said bit burst analysis information comprises a plurality of bit counters, each of said bit burst counters counting a number of bit bursts that was placed into one of a plurality of burst categories." (Office Action, p. 2, paragraph 2.) Applicants respectfully traverse this rejection.

The present application describes a network management system 9 that collects information relative to performance of the communication network. (Application, p. 12, lines 6-8.) The present application gives the following example of performance information:

transmit burst analysis -- the generation of which is disclosed in commonly assigned co-pending U.S. Patent Application Serial No. 09/118,106, entitled SYSTEM AND METHOD FOR CHARACTERIZING BURST INFORMATION, filed on July 17, 1998, which is hereby incorporated by reference.

(Application, p. 12, lines 9-12.)

Applicants submit that at least the following portions of Application 09/118,106 (incorporated by reference into the present application) support the rejected language of claims 1, 5, 8 and 11:

Burst categorization logic 100 detects and categorizes burst data transmissions and causes bit counter 115 (Fig. 3) to increment each time a burst is detected in each category and will be described in detail hereafter. (Application 09/118,106, p 14, lines 9-12.)

Once the burst is categorized, the appropriate counter will be incremented for that category. For example, the appropriate bit counter 115 will be incremented for that category where the burst data is detected. (Application 09/118,106, p 15, lines 10-12.)

Furthermore, while illustrated as single elements, bit counter 115, current bucket pointer 120 and frame counter 140 each comprise a plurality of counters, one for each category of detected burst data. (Application 09/118,106, p 15, lines 17-19.)

Therefore, Applicant respectfully requests that the rejection of claims 1-3 and 5-20 be withdrawn.

2. Rejection of Claims 1-3, 5-16, and 18-20 under 35 U.S.C. §103

Claims 1-3, 5-16, and 18-20 have been rejected under §103(a) as allegedly obvious over *Shurmer et al.* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 1, 5, 8, and 11

Applicant respectfully submits that claims 1, 5, 8, and 11 are allowable for at least the reason that the proposed combination of *Shurmer et al.* in view of *Schulman* does not disclose, teach, or suggest at least the feature of “a plurality of bit counters, each of said bit burst counters

counting a number of bit bursts that was placed into one of a plurality of burst categories,” as recited in claims 1, 5, 8, and 11.

The Office Action admits that “*Shurmer et al.* fails to teach for collecting and displaying network parameters bit burst analysis.” (Office Action, p. 3, paragraph 5.) The Office Action alleges that “*Schulman* teaches for a network analyzer collecting and displaying network parameters such as packet sized minimum and/or maximum (bit burst).” (Office Action, p. 4, paragraph 6.) The Office Action thus equates the packet size minimum and maximum collected by *Schulman* with the bit burst analysis information collected by Applicants’ invention. Applicant respectfully disagrees.

Schulman teaches collecting a minimum packet size statistic and a maximum packet size statistic. However, *Schulman* does not teach, suggest or disclose at least “a ***plurality of bit counters***, each of said bit burst counters ***counting a number of bit bursts that was placed into one of a plurality of burst categories.***”

Accordingly, the proposed combination of *Shurmer et al.* in view of *Schulman* does not teach at least “a plurality of bit counters, each of said bit burst counters counting a number of bit bursts that was placed into one of a plurality of burst categories,” as recited in claims 1, 5, 8, and 11. Since the proposed combination does not teach at least the above-described features recited in claims 1, 5, 8, and 11, a *prima facie* case establishing an obviousness rejection by *Shurmer et al.* in view of *Schulman* has not been made. Thus, claims 1, 5, 8, and 11 are not obvious under the proposed combination, and the rejection should be withdrawn.

b. Claims 2-3, 6-7, 9-10, 12-16 and 18-20

Claims 2-3, 6-7, 9-10, 12-16 and 18-20 depend from claims 1, 5, 8, and 11, which are believed to be allowable for at least the reasons stated above. Since claims 1, 5, 8, and 11 are

allowable, Applicant respectfully submits that claims 2-3, 6-7, 9-10, 12-16 and 18-20 are allowable for at least the reason that they depend from allowable claims. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-3, 6-7, 9-10, 12-16 and 18-20 be withdrawn.

3. Rejection of Claim 17 under 35 U.S.C. §103

Claim 17 has been rejected under §103(a) as allegedly obvious over *Shurmer et al.* (U.S. 5,974,237) in view of *Schulman* (U.S. 5,600,632) and further in view of the knowledge of one of ordinary skill in the art. Applicant respectfully traverses this rejection.

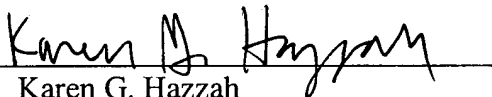
Claim 17 depends from claim 15, which is believed to be allowable for at least the reasons stated above. Since claim 15 is allowable, Applicant respectfully submits that claim 17 is allowable for at least the reason that it depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 17 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-3 and 5-20 be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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